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S E C R E T SECTION 01 OF 03 BAGHDAD 000395

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TAGS: [ENRG](#) [EPET](#) [IZ](#)
SUBJECT: MEETINGS IN ERBIL ADVANCE HYDROCARBON LAW, ENERGY
COMMITTEE TO REVIEW

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Classified By: AMBASSADOR ZALMAY KHALILZAD, REASONS 1.5 (B) and (D).

11. (S//NF) Summary: On February 3-4, meetings took place in the Kurdistan Region (KR) on the draft national hydrocarbon framework law to resolve the four outstanding areas of dispute between the central government and the Kurdistan Regional Government (KRG). These issues included a) the mechanism for negotiating and approving contracts (Art. 10); b) the revenue sharing mechanism (Art. 11); c) established contracts (Art. 40); and d) disputed territories (Art. 41). Participants included, in addition to the Ambassador, Energy Committee Chairman and Deputy Prime Minister (DPM) Barham Salih, Advisor to the Prime Minister Thamir Ghadhban, Minister of Planning Ali Baban, KRG Prime Minister Nechirvan Barzani and other KRG representatives. KRG President Massoud Barzani was also present for much of the discussion. End Summary.

12. (S//NF) Going into the talks, the positions on contract approval were that the central government wanted the Federal Oil and Gas Council (FCOG) to have the right to "approve" or "not object" to contracts negotiated by regional authorities. The KRG was unwilling to accept the FCOG doing more than review its contracts, based on the position granted to the KRG under the Constitution. A compromise formulation was reached that spells out the procedure for obtaining approval and grants the FCOG the right to "not object" to a contract if it is not consistent with established guidelines and the opinion of independent experts. This formulation meets PM Maliki's requirement.

13. (S//NF) On the revenue sharing mechanism, while there had long been agreement on the principles that the oil revenues be shared on a per capita basis and received into a single national account under the Central Bank of Iraq, the KRG position had been to define a system that gave a greater role in distributing revenues to Kurdish and other groups. A compromise was reached that briefly spells out the governing principles of revenue sharing while leaving the details to be covered in a companion law to the framework law. The goal is to complete drafting of this draft revenue law by the end of February. The Embassy has already sent an outline of the revenue law drafted by the KRG to our legal advisers, and will be working with the parties to provide a full draft as soon as possible.

14. (S//NF) On the issue of the established contracts, the position of the central government had been that all contracts, both KRG and Saddam-era deals, had to be reviewed by the FCOG for conformity with the framework law. The KRG position had been that since Art.145 of the Constitution gives certain rights to the regions, these KRG contracts should not be subject to binding decisions by the FCOG.

Following the discussions, it was agreed that upon adoption of the framework law, the KRG would undertake to make any existing contracts conform to the principles and guidelines of the framework law, and that the results of this review would be assessed by the independent experts attached to the FCOG. The assessment of the independent expert group will be binding. One question remains is whether the FCOG will have the right to assess the contracts as well and make decisions on them.

¶5. (S//NF) On the issue of the disputed territories (Kirkuk), the KRG position had been to have any development of oil and gas resources be subject to shared management by the central government and the KRG until the final status of the territories had been determined. The central government position had been that no mechanism should be established which appeared to pre-judge the outcome of any referenda on disputed territories. It was agreed to limit mention of the issue to the existing language covering licensing and management -- consistent with the central government position. However, since the Kirkuk referendum is planned for November, the KRG plans to undertake to reach a side agreement with the central government spelling out that no development take place in Kirkuk until that time.

¶6. (S//NF) The results of the discussions are to be referred for final decision to the full Energy Committee, and Minister of Oil Husayn al-Shahristani - who was not able to attend - will need to be brought on board with the KRG's proposals. DPM Salih argued that the draft law should be approved quickly by the CoM, but the KRG's position at this point is that the appendices to the law should be completed before the law can be considered by the CoM (the appendices detail fields that go to the national oil company, model contracts, and contracting guidelines). In addition to the appendices, the Kurds want companion legislation - especially the revenue-sharing law - to be presented to the CoM

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concurrently. Nevertheless, DPM Salih is committed to pushing the framework law forward, and we will seek to build on any positive momentum from the Erbil meeting in support of that goal.

¶7. (S//NF) The decision to hold the meetings in the North was a good one. Ambassador Khalilzad was able to engage President Barzani and press Prime Minister Barzani to resolve most of the outstanding issues. The Energy Committee is expected to take up the results of the talks in next day or two.

¶8. (S//NF) COMMENT: The Ambassador believes that while a preliminary agreement was reached, individual actors within the KRG and central government leadership may yet raise new objections, buying time to broker new contracts which they perhaps would stand to personally gain from. END COMMENT.

¶9. (S//NF) The agreed upon text follows:

Erbil- February 4, 2007

Subject: The opinion of the Region of Kurdistan

A series of meetings were held during the two days of the 3rd and 4th of February to explore the remaining items of the law. The principal remaining articles are as follows:

- 1- Article 10 Mechanisms of Negotiating and Contracting.
 - 2- Article 11 Oil resources.
 - 3- Article 40 the Standing Contracts.
 - 4- Article 41 the amendments of the Administrative borders.
- After an expanded discussion, the Region presented the following language:

First: The Mechanisms of Negotiating and Contracting:

A - The Ministry or the National Oil Company or the Regional Organization, each according to its own competence and responsibility and after completion of the preliminary procedures of licenses referred to in Article 9, shall undertake the initial signing of the exploration and production contract with the selected contractor.

B - The contracts of exploration and production referred to in Article 10/A stipulate the following:-

(The contract shall be valid, so long as the Federal Council for Oil and Gas did not object to it in accordance with the provisions of Article 10 of the Oil Law numbered (----) for the year 2007 regulating the negotiation and contacting mechanism and the attached model contracts and instructions and any amendments which may be issued in this respect by the Council in accordance with the provisions of Article 5.

C - The Initial contract mentioned in Article 10/B must be referred to the Federal Council for Oil and Gas within 30 days of the initial signing of it, otherwise it is considered null and void.

D - The Federal Council for Oil and Gas shall follow in making its decision concerning the contracts referred to it by the Ministry or the National Oil Company or the Region , the following steps:

First: Referring the initial contact mentioned in Article 10/E , if the Federal Council for Oil and Gas deemed it necessary, to the office of Independent Advisors to study and state its opinion concerning it and the extent to which it is consistent with model contracts and the instructions attached to the law regulating licenses for exploration and production and in accordance with Article 9.

Second: In the case there are serious deviations in the initial contract, from the model contacts and instructions attached to the law, the Federal Council for Oil and Gas shall issue its final decisions with two third majority of its present members guided by the recommendations of the Office of Independent Advisors.

Third: The Ministry or the Iraqi National Oil Company or the Regional Organization shall be informed of the decision to object the initial contract and the reasons for the objection within 60 days from receiving the initial contract by the Federal Council for Oil and Gas. The initial contract shall be considered valid in case no decision was issued by the Council after the lapsing of the mentioned period. And in the case that a meeting of the Federal Council for Oil and gas is difficult to hold within 60 days from the Council's receipt of the initial contracts, the Council shall make its decision concerning the contract during the following 30 days using various available means. The contract shall be considered valid in the case a decision was not issued after the lapse of the mentioned period.

Fourth: The Ministry or the Iraqi Oil Company or the Regional

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Organization shall address the reasons for the objection by the Federal Council for Oil and Gas through conducting amendments to the initial contract and presenting it anew to the Federal Council for Oil and Gas in accordance with the steps mentioned in this article.

Second: Oil Resources

A - Based on what is stipulated in the Constitution (Article 112,111,106,121 (Third) which dealt with the ownership of oil and gas wealth and the distribution of revenues resulting from it and monitoring the allocation of the Federal revenues, the Council of Ministers shall present a draft law of financial resources to the CoR regulating that and adopting the principles stated in the paragraphs of this article.

B - Oil resources include amounts received by the state from Oil and Gas sales, royalty, signing awards and production bonuses for oil contracts with foreign and local companies.

C - The revenues referred to in Article 11/A shall be deposited in an account for that purpose to be named "Oil

Revenues Fund" and the law of financial resources shall regulate the mechanisms for managing the Fund and assuring its fair distribution in accordance with the Constitution.

The Law of Financial Resources shall be presented for enactment simultaneously with the Oil Law.

Third: Standing Contracts

A - The Region of Kurdistan shall undertake the review of all extraction and production contracts signed with any entity before this law comes into force so that it can be in harmony with the goals and general provisions of the law within a period not to exceed three months from the issuance of the law in order to achieve the highest benefit for the Iraqi people taking into consideration the circumstances under which such contracts were signed. The office of Independent Advisors shall undertake the evaluation of the contracts after the review mentioned above and its recommendations shall be obligatory with regard to dealing with these contracts.

B - In exception of Paragraph (A), the Ministry shall review all exploration and production contracts signed with any entity before this law enters into force in order to be in harmony with the goals and general provisions of the law and to present it to the Federal Council for Oil and Gas within a period not to exceed three months from the issuance of the law to ensure achieving the highest benefits for the Iraqi people and for the Council to make its decision regarding the accuracy of the review and the validity of the contract.

Fourth: Amendments of Administrative Borders

In the case of conducting administrative amendments to the borders of producing regions and Governorates or establishing new regions, the areas included in the change shall be dealt with in accordance with the provisions of this law concerning granting of licenses and managing oil operations.

along with requesting a side letter of understanding stating the joint work between the Ministry and the Region concerning management of the oil operations and license granting during the transitional period in accordance with mechanisms approved by the Federal Council for Oil and gas, with the exception of the operations of the National Oil Co.

The Region has presented a proposal for amending Article(5)/B concerning the authorities of the Council of Ministers which aim to assure balance between the principal components of the Iraqi people in assigning leading positions in the three entities , the Federal Council for Oil and gas , the Ministry of Oil and the Iraqi National Oil Company.

KHALILZAD